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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CANA FOUNDATION, a non-profit  
corporation, LAURA LEIGH, individually,  
and WILD HORSE EDUCATION, a non-  
profit corporation,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
INTERIOR, BUREAU OF LAND  
MANAGEMENT, and JON RABY, Nevada  
State Director of the Bureau of Land  
Management,

Defendants.

CASE NO.

**PLAINTIFFS' COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**



1 CANA Foundation's principal place of business is at 6150 Northern Boulevard, East Norwich,  
2 N.Y., 11732. CANA Foundation's rewilding initiatives foster community empowerment, land  
3 conservation, and the sustainable management and preservation of America's wild horse  
4 populations. CANA Foundation rescues, re-wilds, and re-homes wild horses in order to improve  
5 their quality of life and ensure that they can live with dignity in protected habitats. CANA  
6 Foundation actively monitors for any Herd Management Area Plans that are available for public  
7 comment in the United States and routinely submits comments throughout the public commenting  
8 process. The Blue Wing Complex is one of the wild horse herds that CANA Foundation monitors  
9 and advocates for. The further gathering and removal of wild horses and burros in the Blue Wing  
10 Complex due to the challenged actions will adversely affect the substantial recreational, aesthetic,  
11 scientific, and conservational interests of CANA Foundation and its staff, volunteers, members,  
12 and supporters.

13 5. Defendants' failure to comply with the requirements of the Wild Free-Roaming  
14 Horses and Burros Act injured the CANA Foundation because Defendants' failure to prepare the  
15 required HMAP thwarted their organizational mission to advance rewilding as an alternative  
16 management strategy for wild horses and burros. Because the BLM failed to prepare an HMAP  
17 (and refused to entertain comments it considered outside the scope of its NEPA review that would  
18 have been appropriate in the context of an HMAP review), the CANA Foundation has been and  
19 continues to be injured by Defendants' violations of the law.

20 6. Plaintiff WILD HORSE EDUCATION is a national non-profit corporation  
21 dedicated to research, journalism, and public education concerning the activities and operations of  
22 federal and state management of the free-roaming wild horse and burro populations. Wild Horse  
23 Education's principal place of business is 216 Lemmon Drive, # 316, Reno, N.V., 89506. Wild  
24 Horse Education has more than 150,000 members and educates and informs the public about wild  
25 horses and burros through articles, photographs, videos, and sharing data and other information.  
26 Wild Horse Education also frequently submits comments on Herd Management Area Plans,  
Environmental Assessments, and other wild horse management documents and hearings made

1 available for public comment. Advocating for the wild horses and burros in the Blue Wing  
2 Complex is a past, present, and future important issue for Wild Horse Education. Wild Horse  
3 Education attended Bureau of Land Management's public tour of the Blue Wing Complex in  
4 March 2016 and actively participated in the public commenting process of the Environmental  
5 Assessment for the Blue Wing Complex Gather Plan, which was finalized on October 23, 2017.  
6 Wild Horse Education has actively participated in the review of wild horse and burro management  
7 and gather plans, and their members and supporters regularly attend and observe wild horse and  
8 burro roundups, removals, and holding pens. The further gathering and removal of wild horses and  
9 burros in the Blue Wing Complex due to the challenged actions will adversely affect the substantial  
10 recreational, aesthetic, and conservational interests of Wild Horse Education and its staff,  
11 volunteers, members, and supporters.

12 7. Plaintiff LAURA LEIGH is the Founder and President of Plaintiff WILD HORSE  
13 EDUCATION. In addition, Ms. Leigh works with multiple non-profit organizations engaged in  
14 public land issues and provides in-field documentation and commentary on public land issues such  
15 as wild horse and burro gathers and removals. Ms. Leigh is also a free-lance photojournalist, whose  
16 work has appeared internationally in media broadcast outlets, such as CNN, BBC/ITV, ABC,  
17 Common Dreams, and CounterPunch. Ms. Leigh has visited, observed, and photographed the wild  
18 horses and burros at the Blue Wing Complex at least once a year since 2009. Ms. Leigh experiences  
19 great enjoyment from watching and monitoring individual horses and burros in the Blue Wing  
20 Complex. Of particular interest, Ms. Leigh commonly seeks out and photographs paint burros at  
21 the Blue Wing Complex as this is one of the only areas where there are wild paint burros. Ms.  
22 Leigh has also attended several wild horse and burro roundups throughout the United States, and  
23 frequently reviews photographs and videos from any roundups she is not able to attend in person.  
24 When Ms. Leigh recognizes individual horses and burros that she has previously observed as wild,  
25 free-roaming horses and burros, she experiences great sadness, but feels it is her responsibility to  
26 the animals to observe their treatment and capture and share it with others to educate them on the  
plight of wild horses and burros. The further gathering and removal of wild horses and burros in

1 the Blue Wing Complex due to the challenged actions will adversely affect the substantial  
2 recreational, aesthetic, and conservational interests of Ms. Leigh.

3 8. CANA Foundation and Wild Horse Education (collectively, the Nonprofit  
4 Plaintiffs) and their members, supporters, and staff have a long-standing interest in wild, free-  
5 roaming horses and burros and routinely advocate for wild horses and burros in Nevada. If they  
6 had been given the opportunity, Nonprofit Plaintiffs would have submitted comments to the  
7 Bureau of Land Management regarding a Herd Management Area Plan for the Blue Wing  
8 Complex.

9 9. Wild Horse Education's members, supporters, and staff visit the Blue Wing  
10 Complex for photography, observing wildlife, and other recreational and professional pursuits.  
11 Nonprofit Plaintiffs' members, supporters, and staff gain aesthetic enjoyment from observing,  
12 attempting to observe, hearing, seeing evidence of, and studying wild horses and burros. The  
13 opportunity to possibly view wild horses and burros, or signs of them, in these areas is of  
14 significant interest and value to Nonprofit Plaintiffs' members, supporters, and staff, and increases  
15 their use and enjoyment of Nevada's public lands. Nonprofit Plaintiffs' members, supporters, and  
16 staff have engaged in these activities in the past and have specific plans to do so again in the future.

17 10. Nonprofit Plaintiffs' members and supporters are adversely impacted by the  
18 gathering and removal of wild horses and burros from the Blue Wing Complex. Nonprofit  
19 Plaintiffs' members also have an interest in the health and humane treatment of animals, and work  
20 to rehabilitate sick and injured wildlife, including horses and burros. Nonprofit Plaintiffs'  
21 members, staff, volunteers, and supporters have engaged in these activities in the past and intend  
22 to do so again soon.

23 11. Nonprofit Plaintiffs, as well as their members, supporters, and staff, are dedicated  
24 to ensuring the long-term survival of the wild, free-roaming horses and burros throughout the  
25 contiguous United States, and specifically in Nevada, and to ensuring that Defendants comply with  
26 all applicable state and federal laws related to the survival and humane treatment of wild horses  
and burros in Nevada. In furtherance of these interests, Nonprofit Plaintiffs' members, supporters,

1 and staff have worked, and continue to work, to protect and advocate for wild horses and burros  
2 in Nevada and throughout the contiguous United States.

3 12. The interests of Nonprofit Plaintiffs' members, supporters, and staff have been, and  
4 will continue to be, injured by Defendants' improper and inhumane gather and removal of wild  
5 horses and burros in the Blue Wing Complex. The interests of Nonprofit Plaintiffs' members,  
6 supporters, and staff have been, and will continue to be, injured by Defendants' failure to comply  
7 with their obligations under the Wild Free-Roaming Horses and Burros Act (Wild Horse Act),  
8 National Environmental Policy (NEPA), and Administrative Procedure Act (APA) in gathering  
9 and removing wild, free-roaming horses and burros in gruesome and inhumane ways in the Blue  
10 Wing Complex without a Herd Management Area Plan.

11 13. The injunctive relief requested provides the only remedy that can redress the  
12 injuries of Nonprofit Plaintiffs, including of their members, supporters, volunteers, and staff. The  
13 relief requested by Plaintiffs, if granted, would require Defendants to comply with the  
14 requirements of the Wild Horse Act, NEPA, and APA before further gathering and removing wild,  
15 free-roaming horses and burros from the Blue Wing Complex. The relief requested by Plaintiffs,  
16 if granted, would reduce the number of wild, free-roaming horses and burros needlessly injured,  
17 killed, or removed by Defendants.

18 14. Defendant JON RABY is Nevada State Director of the BLM, and is charged by  
19 federal statute with managing, administering, and protecting the wild horses and burros in the State  
20 of Nevada, including the Blue Wing Complex, pursuant to the Wild Horse Act.

21 15. Defendant DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGE-  
22 MENT is charged by federal statute to manage administer and protect the wild horses and burros  
23 in the State of Nevada, including the Blue Wing Complex, pursuant to the Wild Free-Roaming  
24 Horses and Burros Act, 16 U.S.C. §§ 1331-1340.

## 25 **GENERAL ALLEGATIONS OF FACTS**

### 26 **A. Wild Free-Roaming Horses and Burros Act**

16. Finding that "wild free-roaming horses and burros are living symbols of the historic

1 and pioneer spirit of the West,” and that “they contribute to the diversity of life forms within the  
2 Nation and enrich the lives of the American people,” Congress enacted the Wild Free-Roaming  
3 Horses and Burros Act (Wild Horse Act) to ensure that “wild-free roaming horses and burros shall  
4 be protected from capture, branding, harassment, [and] death,” and will “be considered in the area  
5 where presently found, as an integral part of the natural system of the public lands.” 16 U.S.C. §  
6 1331.

7 17. “Wild free-roaming horses and burros” are defined under the Wild Horse Act as  
8 “all unbranded and unclaimed horses and burros on public lands of the United States,” which  
9 include lands “administered by the Secretary of the Interior through the Bureau of Land  
10 Management or by the Secretary of Agriculture through the Forest Service.” *Id.* §§ 1332(b), (e);  
11 *see also* 36 C.F.R. § 222.60(b)(13).

12 18. The Wild Horse Act directs the Secretary of the Interior to “manage wild free-  
13 roaming horses and burros as components of the public lands ... in a manner that is designed to  
14 achieve and maintain a thriving natural ecological balance on the public lands.” 16 U.S.C. § 1331.  
15 To further ensure this objective, the statute provides that “[a]ll management activities shall be at  
16 the minimal feasible level.” 16 U.S.C. § 1333(a).

17 19. The Wild Horse Act also gives the Secretary the ability to remove “excess” wild  
18 free-roaming horses and burros from the public range. “[E]xcess animals” are defined in the statute  
19 as wild free-roaming horses and burros “which must be removed from an area in order to preserve  
20 and maintain a thriving natural ecological balance and multiple-use relationship in that area.” 16  
21 U.S.C. § 1332(f).

22 20. The Secretary must first make a determination that 1) an overpopulation of animals  
23 exists and 2) that action is necessary to remove excess animals, before immediately removing the  
24 excess animals. 16 U.S.C. § 1333(b)(2). The Secretary must determine both of those requirements  
25 on the basis of the current inventory of lands, information contained in any land use planning  
26 documents, information contained in court ordered environmental impact statements, and any  
additional information currently available to him/her. *Id.*

1           21. A wild horse gather plan violates the immediate removal mandate of the Wild Horse  
2 Act when it permits the removal of excess animals up to ten years from its promulgation. *Friends*  
3 *of Animals v. Culver*, No. 19-3506 (D.D.C. Jun. 28, 2022).

4           22. Excess horses must be “humanely captured and removed” per the Wild Horse Act’s  
5 mandates. 16 U.S.C § 1333(b)(2)(B).

6           23. “[H]umane treatment” is defined as “handling compatible with animal husbandry  
7 practices accepted in the veterinary community, without causing unnecessary stress or suffering to  
8 a wild horse or burro.” 43 C.F.R. § 4700.0-5(e). “Inhumane treatment” is defined as “any  
9 intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a  
10 wild horse or burro and is not compatible with animal husbandry practices accepted in the  
11 veterinary community.” 43 C.F.R. § 4700.0-5(f).

12           24. The Secretary delegated responsibility to administer the Wild Horse Act to the  
13 BLM. 43 C.F.R. § 4700.0-3.

14           25. The BLM’s regulations require that the Secretary establish Herd Management  
15 Areas for the maintenance of wild horse and burro herds. 43 C.F.R. § 4710.3-1. In delineating each  
16 herd management area, the BLM must consider the appropriate management level for the herd, the  
17 habitat requirements of the animals, the relationships with other uses of the public and adjacent  
18 private lands, and the constraints contained in § 4710.4, which limits management of wild horses  
19 and burros to “the minimum level necessary to attain the objective identified in approved land use  
20 plans and herd management area plans.” 43 C.F.R. § 4710.4.

21           26. Once a Herd Management Area is established, the BLM “*shall* prepare a herd  
22 management area plan, which may cover one or more herd management areas.” 43 C.F.R. § 4710.4  
(emphasis added).

23           27. The Herd Management Area Plans assist the BLM in meeting the regulatory policy  
24 requirements to manage wild horses and burros “in balance with other uses and the productive  
25 capacity of their habitat” and to ensure that wild horses and burros are “considered comparably  
26 with other resource values[.]” 43 C.F.R. §§ 4700.0-6(a)-(b).



1           28. A Herd Management Area Plan is the only wild horse and burro management  
2 document that is expressly identified and required by the Wild Horse Act regulations.

3           29. The BLM implements its regulations through a policy document referred to as the  
4 “Wild Horses and Burros Management Handbook H-4700-1,” (BLM Handbook).

5           30. The BLM Handbook is not an agency rule; it was not subject to notice and comment  
6 rulemaking and does not have the force and effect of law, like the Wild Horse Act and BLM  
7 Regulations. The BLM Handbook is a policy document that presents guidance to BLM staff for  
8 implementing BLM’s statutory and regulatory obligations in a uniform matter.

9           31. Nevertheless, the BLM Handbook mirrors the BLM Regulations and requires that  
10 all wild horse herd management activities be carried out “at the minimum feasible level of  
11 management necessary to attain the objectives identified in approved land use plans (LUPs) *and*  
12 Herd Management Area Plans (HMAPs).” BLM Handbook, Chap. 1, p. 6 (emphasis added).

13           32. Nothing in the BLM Handbook gives BLM authority to ignore its statutory and  
14 regulatory mandate to conduct herd management activities in a way that maintains the minimum  
15 feasible level required pursuant to a LUP *and* HMAP. *See* 43 C.F.R. § 4710.4 (“Management shall  
16 be at the minimum level necessary to attain the objectives identified in approved land use plans  
17 and herd management area plans.”)

18           33. The BLM Handbook goes on to clarify that HMAPs, rather than LUPs, must be  
19 used to identify and document habitat and population management and monitoring objectives for  
20 specific complexes of HMAs. *Id.* at Chap. 2, p. 10. In fact, the BLM Handbook dictates that  
21 HMAPs must tier to and be in conformance with applicable LUPs. *Id.*

22           34. To achieve statutory goals, HMAPs must also include a plan for monitoring and  
23 evaluating management actions and decisions and require the collection of data/information  
24 necessary to evaluate the effectiveness of those decisions. *Id.* at Chap. 6.2, p. 43. The BLM  
25 Handbook further emphasizes that “[a]s required in 43 C.F.R. § 4710.4, management shall be at  
26 the minimum level necessary to attain the objectives identified in approved LUPs and HMAPs.”  
*Id.*

1           35. Importantly, in evaluating and selecting the wild horse management plan  
2 authorized by an HMAP, the BLM must consider a range of alternatives, including taking no  
3 action. *Id.* at p. 38. The BLM Handbook provides the example of “consider[ing] differing gather  
4 seasons or methods, various tools to slow population growth, or various habitat tools, projects, or  
5 techniques” as possible considerations for an alternatives analysis. *Id.* The alternative management  
6 strategies identified in an HMAP are intended to be broader and more long-term than just single  
7 and one-time management tools, projects, or methods.

8           36. HMAPs may be prepared for a single HMA or a complex of adjacent HMAs where  
9 animal interchange occurs and must “identify and set objectives for [wild horse and burro] herds  
10 and their habitat.” *Id.* at Chap. 6, p. 11, 36.

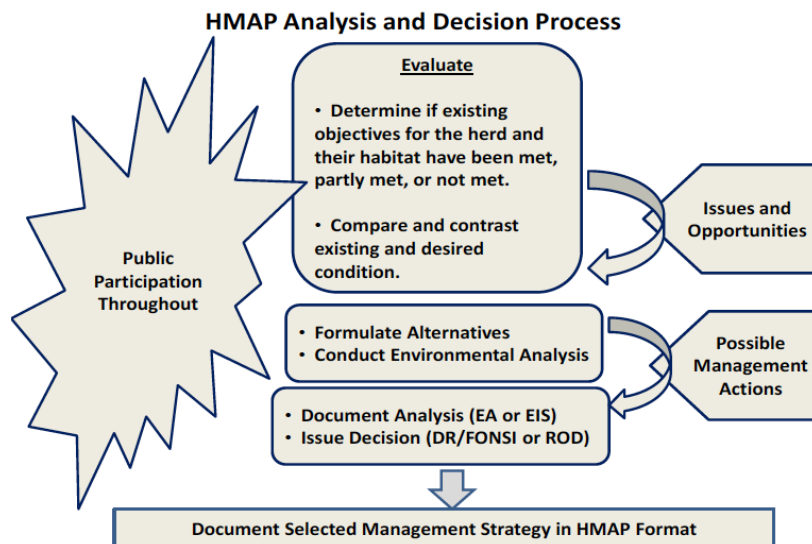
11           37. Habitat management and monitoring consists of analyzing the forage, water, cover,  
12 and space available for wild horses. *Id.* at Chap. 3, p. 12-13.

13           38. Examples of habitat management projects include seeding, emergency fire  
14 rehabilitation, constructing and maintaining fencing, rewilding, and water developments. *Id.* at p.  
15 13-15. Examples of population control methods include gathers and removals, fertility control, and  
16 adjusting male/female sex ratios. *Id.* at p. 23-17.

17           39. The BLM makes clear that the public participation process for an HMAP involves  
18 public review and comment to allow for public scoping of the key issues identified and the range  
19 of alternatives to be considered in the HMAP. *Id.* at p. 37.

20           40. Figure 6.1 of the BLM Handbook demonstrates the separate and important  
21 decision-making process undertaken by agency officials when developing required HMAPs,  
22  
23  
24  
25  
26

Figure 6.1  
Overview of the HMAP Analysis and Decision Process



including public participation. *See* BLM Handbook, Figure 6.1, p. 36.

41. During HMAP development, herd-specific and habitat-specific information and concerns may be raised during public participation. For example, the public could submit information and data regarding the foaling season of the particular herd or local weather conditions that effect the range and horse movement during certain months. BLM would then be required to consider and address these site-specific concerns in the HMAP and any management actions that result from the HMAP would be in conformance with these considerations. This leads to more tailored and humane management actions.

42. In the few HMAPs that BLM has developed, the HMAP affirms that BLM uses the HMAP to attain the mandate in the Wild Horse Act to establish a “thriving ecological balance” between and among wild horses, burros, and their habitat.

43. The BLM has identified no other mechanism to attain the goals specific to the Wild Horse Act, including ensuring the humane treatment and, if necessary, capture of wild horses.

## **B. National Environmental Policy Act**

44. A second statute, NEPA, 42 U.S.C. § 4321 et seq., governs decisions by the BLM to gather horses. NEPA requires federal agencies to take a “hard look” at the environmental

1 consequences before carrying out federal actions. *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360,  
2 373-74 (1989).

3 45. NEPA serves the dual purpose of, first, informing agency decisionmakers of the  
4 significant environmental effects of proposed major federal actions and, second, ensuring that  
5 relevant information is made available to the public so that it “may also play a role in both the  
6 decision-making process and the implementation of that decision.” *See Robertson v. Methow*  
7 *Valley Citizens Council*, 490 U.S. 332, 349 (1989).

8 46. To meet these goals, NEPA requires a comprehensive Environmental Impact  
9 Statement (EIS) for “major Federal actions significantly affecting the quality of the human  
10 environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.3.

11 47. To determine whether a proposed action will have significant effects, an agency  
12 may prepare an Environmental Assessment (EA). 40 C.F.R. § 1501.54. An EA is a “concise public  
13 document” that “[b]riefly provide[s] sufficient evidence and analysis for determining whether to  
14 prepare an [EIS].” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 757 (2004) (quoting 40 C.F.R.  
15 § 1508.9(a)).

16 48. Unlike the Wild Horse Act, NEPA does not impose any substantive obligations  
17 upon an agency but requires that an agency take a “hard look” at the environmental consequences  
18 of its decision-making. *Robertson*, 490 U.S. at 350.

19 49. If in its EA the agency finds that the proposed action will not significantly affect  
20 the human environment, it may issue a finding of no significant impact (FONSI) in lieu of an EIS.  
21 *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005) (citing 40  
22 C.F.R. § 1508.9(a)(1)); *see also* 40 C.F.R. § 1501.6(e).

23 50. A FONSI “briefly present[s] the reasons why an action ... will not have a  
24 significant effect on the human environment and for which an [EIS] therefore will not be  
25 prepared.” 40 C.F.R. § 1508.1(1).

26 51. When preparing an EA, agencies are only required to conduct brief discussions of  
reasonably feasible alternatives that are reasonably related to the purpose of the project. *See*

1 *Westlands Water Dist. v. U.S. Dep't of Interior*, 376 F.3d 853, 868 (9th Cir. 2004). Agencies need  
2 not “consider alternatives which are infeasible, ineffective, or inconsistent with the basic policy  
3 objectives for the management of the area.” *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180 (9th  
4 Cir. 1990) (citing *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982)).

5 52. Critically, an agency’s “obligation to consider alternatives under an EA is a lesser  
6 one than under an EIS,” and so long as “‘reasonable alternatives’ have been considered,” there is  
7 no “minimum number of alternatives that an agency must consider.” *Native Ecosystems Council*,  
8 428 F.3d at 1246 (finding sufficient the consideration of two alternatives including the no-action  
9 alternative).

10 53. According to the BLM Handbook, if the BLM decides to implement the objectives  
11 of an HMAP by removing excess wild horses, it must prepare an environmental assessment to  
12 comply with NEPA for that specific gather plan. BLM Handbook, at p. 27-28; *see id.* at Chap. 7,  
13 p. 48 (the environmental analysis for gather plans should tier to HMAPs). (A gather plan that has  
14 gone through the NEPA process will be referred to as a “Gather-EA” throughout this Complaint.)

15 54. BLM has determined that under NEPA, Gather-EAs are not required to solicit  
16 public scoping comments and are limited in scope to analyzing the proposed action’s effect on the  
17 human environment.

18 55. Because the broad management of wild horses under an HMAP is also a federal  
19 action that may significantly affect the human environment, the BLM may prepare an HMAP-EA  
20 that analyzes herd management and the environmental impacts associated with a range of  
21 alternative herd management strategies for the herd and its habitat. *Id.* at Chap. 6, p. 38. (A  
22 finalized HMAP that has gone through the NEPA process will be referred to as an “HMAP-EA”  
23 throughout this Complaint.)

24 56. Though the NEPA process may be used to analyze the HMAP’s potential impacts  
25 to the human environment, the NEPA process is one discreet part of the HMAP preparation process  
26 which, when completed, is intended to analyze the broad and long-term potential impacts to the  
wild horse herds and their habitats. *See id.* at Chap. 6, pp. 36-44 (Herd Management Area

1 Planning).

2 57. To further illustrate the distinction between an HMAP/HMAP-EA and a Gather-  
3 EA, the BLM Handbook indicates that the separate decision to gather and remove horses has a  
4 different appeal process than the appeals process for the HMAP generally. *Id.* at Chap. 7, p. 45.

5 58. Additionally, a Gather-EA is not the proper analysis for the long-term management  
6 of wild horses and burros. *Friends of Animals v. Culver*, No. 19-3506 (D.D.C. Jun. 28, 2022)  
7 (holding that “BLM’s ten-year [phased gather-EA] exceeds its discretion, per statutory  
8 command”).

9 59. Therefore, a Gather-EA simply cannot substitute an HMAP or an HMAP-EA.

### 10 **C. The Winnemucca District Resource Management Plan**

11 60. The Blue Wing Complex consists of 2,283,300 acres of land. The Blue Wing  
12 Complex is made up of five Herd Management Areas (HMAs), four Herd Areas (HAs), and other  
13 non-HMA areas. The HMAs are: Kamma Mountains, Seven Troughs Range, Lava Beds, Blue  
14 Wing Mountains, and Shawave. The HAs are: Antelope Range, Selenite Range, Trinity Range,  
and Truckee Range.

15 61. The Blue Wing Complex is located in the Winnemucca District of Nevada and is  
16 therefore subject to the land use planning and management directives in the 2015 Winnemucca  
17 District Resource Management Plan (DOI-BLM-NV-W000-2004-0001-RMP-EIS).

18 62. Appendix K of the Winnemucca District Resource Management Plan consists of  
19 Wild Horse and Burro Standards and Guidelines that were approved on August 30, 2007. The  
20 Standards and Guidelines state the following Implementation directives which require the  
21 development of HMAPs:

22 Following adoption of the Standards and Guidelines for Wild  
23 Horses and Burros, subsequent planning decisions and management  
24 actions must be consistent with the Standards and Guidelines.  
Standards and Guidelines for Wild Horses and Burros as outlined  
above will be implemented through a multi-step process involving:

25 1. Development of herd management area plans and  
26 establishment of long-term objectives for managing wild horses and  
burros and their habitat, initiation of the necessary management

actions, monitoring to assess progress toward achievement of plan objectives; periodic adjustments of population levels to maintain AMLs; and periodic evaluation of management actions to assure they are being implemented and effective in achieving plan objectives.

2. Herd management area plans (HMAPs) will be the vehicle for determining the management and objectives for the herds and their habitat. Assessments of wild horse and burro herds and individual animals will occur through periodic censuses of the animals as well as notation of the condition, age, and sex of animals that have been captured. . .

Department of the Interior Bureau of Land Management Winnemucca District, *Record of Decision and Resource Management Plan for the Winnemucca District Planning Area* (May 22, 2015), Appendix K.

63. The Winnemucca District Resource Management Plan also requires that BLM evaluate and adjust Appropriate Management Levels (AMLs) as applicable based on the multi-tiered process outlined in BLM Handbook 4700-1. *Id.* at Action WHB 5.6, p. 2-32.

64. Further, the Winnemucca District Resource Management Plan states that “[i]f monitoring data indicate that adverse impacts on resources are occurring as a result of livestock, wild horses, or burros, appropriate management actions (e.g., adjust AUMs or AMLs, fence, season of use) will be made to the specific class of use (i.e., livestock, wild horses, burros) causing the impacts. In absence of specie specific monitoring data, adjustments in available forage will be proportional to applicable livestock active AUMs and WHB AMLs.” *Id.* at Action WHB 5.7, p. 2-32.

#### **D. The Blue Wing Complex Gather EA**

65. The BLM never prepared an HMAP for the Blue Wing Complex or any of its HMAs or HAs.<sup>1</sup>

66. Instead, on October 23, 2017, the BLM published the Blue Wing Complex Gather

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<sup>1</sup> Even if any HMAPs have been prepared in the past, they were not considered or cited in the 2017 Blue Wing Complex Gather Plan Final Environmental Assessment at issue.

1 Plan Final Environmental Assessment, DOI-BLM-NV-W010-2015-0034-EA, and its associated  
2 Finding of No Significant Impact (FONSI) and Decision Record. This assessment will be referred  
3 to as the Gather EA throughout this Complaint.

4 67. The Gather EA cites Appropriate Management Levels (AMLs) that were  
5 purportedly established through Final Multiple Use Decisions (FMUDs). *See* Gather EA, Section  
6 1.1, p. 3-5. The most recent FMUD cited is from a 1999 Appeal Order. Gather EA, Table 2, p. 4.

7 68. The Gather EA also admits that most recent monitoring data is from December  
8 2014 animal count estimates. Gather EA, Table 1, p. 3, n.2 (“Fall 2017 estimates are based directly  
9 on the December 2014 estimates (Lubow 2015), with three years of projected population growth”).

10 69. The Gather EA specifically notes that “[f]uture decisions regarding long-term  
11 management within the Blue Wing Complex would continue to be accomplished through a Herd  
12 Management Area Plan...” Gather EA, Section 1.3, p. 5.

13 70. Far narrower in scope than an HMAP, the Gather EA analyzed the proposed gather  
14 as a population control tool and did not analyze this tool as an activity to be utilized in conjunction  
15 with various other habitat and herd management tools.

16 71. The Gather EA did not identify or analyze the herd-specific foaling season, nor the  
17 habitat-specific ground conditions during different seasons, both of which would have been a  
18 required component of an HMAP.

19 72. The Gather EA purports to allow BLM to implement a “wide range of management  
20 actions...designed to...meet low AML and maintain AML ranges within approximately 20 years.”  
21 Gather EA, Section 2.4, p. 19. Alternative B, the preferred alternative and the one chosen in the  
22 Decision Record, admittedly “allows for the most flexibility.” Gather EA, Section 2.0, p. 9.

23 73. The Gather EA did not identify or analyze the significant impacts to the  
24 environment caused by removing over 88% of the horses and burros that make up the Blue Wing  
25 Complex. *See* Gather EA, Table 1, p. 3 (Fall 2017 Estimate of 3,340 horses and burros, compared  
26 to the AML low of 388 horses and burros).

74. The Gather EA did not consider impacts to *horses* as opposed to *the human*



1 *environment* because it was prepared under NEPA, which reflects government environmental  
2 policy, whereas the Wild Horse Act reflects government policy for the humane treatment and  
3 management of wild horses and burros.

4 75. Proving this point, every time Plaintiff Laura Leigh, on behalf of Plaintiff Wild  
5 Horse Education, commented on the preliminary Gather EA regarding subject matter that would  
6 have been considered during the development of an HMAP, the BLM responded by advising that  
7 the comment was outside the scope of the Gather EA, which addressed environmental impacts  
8 only.

9 76. For example, though BLM has authority under the Wild Horse Act to close public  
10 lands to livestock grazing if necessary to protect wild horses (43 C.F.R. § 4710.5), when Ms. Leigh  
11 and other commenters commented on the preliminary Gather EA regarding the impact of livestock  
12 grazing on wild horse habitat, the BLM responded that it was “outside the scope of this EA” and  
13 “[a]djustments to livestock grazing cannot be made through a WH&B gather EA.” Gather EA,  
Appendix J, p. 22.

14 77. Without a proper HMAP, BLM failed to consider recent data—*see* Public  
15 Employees for Environmental Responsibility (PEER), *BLM Rangeland Health Status (2020) – The*  
16 *Significance of Livestock Grazing on Public Lands* (available at  
17 [https://mangomap.com/peer/maps/126421/blm-rangeland-health-status-2020-the-significance-of-](https://mangomap.com/peer/maps/126421/blm-rangeland-health-status-2020-the-significance-of-livestock-grazing-on-public-lands)  
18 [livestock-grazing-on-public-lands](https://mangomap.com/peer/maps/126421/blm-rangeland-health-status-2020-the-significance-of-livestock-grazing-on-public-lands))—indicating that livestock grazing, rather than wild horses, is a  
19 significant reason why a majority of BLM land does not meet its own land health standards.

20 78. In response to public comments, BLM also deemed evidence requiring the  
21 evaluation and adjustment of AMLs to be outside the scope of the Gather EA. Gather EA,  
Appendix J, p. 5-7.

22 79. BLM also deemed range improvements, such as moving fencing and developing  
23 water sources, to be outside the scope of the Gather EA, though both greatly impact the  
24 management of the Blue Wing Complex wild horses and burros and would be considered in an  
25 HMAP. Gather EA, Appendix J, p. 18.

26

80. Though BLM briefly discussed genetic diversity in the Gather EA, it refused to solicit and consider the public's local knowledge of rare genetic lineages present in the Blue Wing Complex such as paint burros which are not common in other HMAs in the United States.

81. The Gather EA also failed to appropriately consider that wild horses are a native species and the resulting harmful environmental impacts of removing native species.

82. To comply with the Wild Horse Act's humane handling directive, BLM incorporated its own Comprehensive Animal Welfare Policy (CAWP). Gather Plan, Section 2.2, p. 10.

83. However, the BLM refused to consider any gather-specific public comment on the CAWP or CAWP implementation.

84. The CAWP itself is a published instruction memorandum and was never subject to notice and opportunity for public comment. BLM, 2015, Instruction Memorandum 2015-151.

#### **E. Blue Wing Complex Gathers**

85. Under the 2017 Gather EA, BLM has already gathered and removed 1,653 horses and 623 burros from the Blue Wing Complex.

86. BLM plans to initiate a gather of 200 horses and 800 burros on August 1, 2022. *See* BLM, *FY2022 Tentative Wild Horse and Burro Gather and Fertility Control Schedule* (July 13, 2022), available at [https://www.blm.gov/sites/blm.gov/files/docs/2022-07/National%202022%20Tentative%20Gather%20and%20FC%20Schedule\\_7.13.2022.pdf](https://www.blm.gov/sites/blm.gov/files/docs/2022-07/National%202022%20Tentative%20Gather%20and%20FC%20Schedule_7.13.2022.pdf).

87. The gather is scheduled to last until August 30, 2022. *See id.*

88. The only rationale for the August 2022 gather is that the number of wild horses and burros in the Blue Wing Complex exceeds the AMLs set in a 1999 Appeal Order. *See id.*; *see also* Gather EA, Table 2, p. 4.

89. The August 2022 gather is purportedly authorized by the 2017 Gather EA.

90. No additional planning or analysis documents are expected to be released prior to the August 2022 gather.

**F. Exhaustion of Administrative Remedies**

91. Plaintiff Laura Leigh, in her individual capacity and on behalf of Plaintiff Wild Horse Education, actively participated in the public commenting process of the Blue Wing Complex Gather EA, which was finalized on October 23, 2017.

92. Plaintiffs CANA Foundation and Wild Horse Education also sent a letter to Defendant Jon Raby on July 18, 2022 demanding that Defendants cancel all future gathers under the 2017 Gather EA until Defendants develop an HMAP and a new or supplemental gather EA.

**FIRST CAUSE OF ACTION**

**Writ of Mandamus, 28 U.S.C. § 1361**

93. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as though fully set forth herein.

94. Defendants have a mandatory duty to prepare a Herd Management Area Plan for each Herd Management Area prior to conducting any herd management activities, including the gather and removal of excess horses, under 43 C.F.R. § 4710.4, which provides, “Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.” 43 C.F.R. § 4710.4, *see also* 16 U.S.C § 1333.

95. Defendants violated 16 U.S.C. § 1333 and 43 C.F.R. § 4710.4 when they authorized the gather and removal of wild horses and burros from the Blue Wing Complex without first developing a Herd Management Area Plan.

96. To the extent Defendants have interpreted the BLM Handbook to conflict with Defendants’ mandatory duty to comply with 43 C.F.R. § 4710.4 to carry out management of wild horse herds at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans, BLM has exceeded its authority and jurisdiction to comply with statutory and regulatory mandates.

97. Defendants only have authority to immediately remove excess animals from the range when current information indicates that there is an overpopulation and action is necessary to remove excess animals. 16 U.S.C. § 1333(b)(2).

1           98. Defendants rely on a 2017 Gather Plan Final Environmental Assessment as  
2 justification for an August 2022 gather of wild horses and burros from the Blue Wing Complex in  
3 violation of 16 U.S.C. § 1333.

4           99. Defendants' failure to adopt a Herd Management Area Plan and a new or  
5 supplemental Environmental Assessment for the Blue Wing Complex has injured Plaintiffs in the  
6 manner described in this Complaint.

7           100. The Mandamus and Venue Act, 28 U.S.C. § 1361, vests district courts with original  
8 jurisdiction over any action in the nature of mandamus to compel a federal officer or agency to  
9 perform a duty owed to plaintiffs.

10           101. Plaintiffs seek a writ of prohibition preventing Defendants from gathering wild  
11 horses and burros under the Blue Wing Complex Gather Plan Final Environmental Assessment,  
12 DOI-BLM-NV-W010-2015-0034-EA, until Defendants have fully complied with the Wild Free-  
13 Roaming Horses and Burros Act and developed a Herd Management Area Plan and a new or  
14 supplemental Environmental Assessment for the Blue Wing Complex.

## 14                                   **SECOND CAUSE OF ACTION**

### 15                                   **Administrative Procedure Act, 5 U.S.C. § 706(1)**

16           102. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as  
17 though fully set forth herein.

18           103. Defendants have a mandatory duty to prepare a Herd Management Area Plan for  
19 each Herd Management Area prior to conducting any herd management activities, including the  
20 gather and removal of excess horses, under 43 C.F.R. § 4710.4, which provides, "Management  
21 shall be at the minimum level necessary to attain the objectives identified in approved land use  
22 plans and herd management area plans." *See* 43 C.F.R. § 4710.4 (implementing 16 U.S.C § 1333).

23           104. Defendants violated 16 U.S.C. § 1333 and 40 CFR § 4710.4 when they authorized  
24 the gather and removal of wild horses and burros from the Blue Wing Complex without first  
25 developing a Herd Management Area Plan.

26           105. Defendants only have authority to immediately remove excess animals from the

1 range when current information indicates that there is an overpopulation and action is necessary  
2 to remove excess animals. 16 U.S.C. § 1333(b)(2).

3 106. Defendants rely on a 2017 Gather Plan Final Environmental Assessment as  
4 justification for an August 2022 gather of wild horses and burros from the Blue Wing Complex in  
5 violation of 16 U.S.C. § 1333.

6 107. Defendants have unlawfully withheld or unreasonably delayed their mandatory  
7 duty to prepare an HMAP for the Blue Wing Complex or for the individual Herd Management  
8 Areas that make up the Complex and their mandatory duty to *immediately* remove animals on the  
9 basis of *current* information.

10 108. Defendants' failure to adopt a Herd Management Area Plan and failure to complete  
11 a new or supplemental Environmental Assessment for the Blue Wing Complex has injured  
12 Plaintiffs in the manner described in this Complaint.

13 109. The Administrative Procedure Act gives this court authority to compel agency  
14 action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

### 14 **THIRD CAUSE OF ACTION**

#### 15 **Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**

16 110. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as  
17 though fully set forth herein.

18 111. Defendants have a mandatory duty to prepare a Herd Management Area Plan for  
19 each Herd Management Area prior to conducting any herd management activities, including the  
20 gather and removal of excess horses, under 43 C.F.R. § 4710.4, which provides, "Management  
21 shall be at the minimum level necessary to attain the objectives identified in approved land use  
22 plans and herd management area plans." *See* 43 C.F.R. § 4710.4, 16 U.S.C § 1333.

23 112. Defendants violated 16 U.S.C. § 1333 and 43 C.F.R. § 4710.4 when they authorized  
24 the gather and removal of wild horses and burros from the Blue Wing Complex without first  
25 developing a Herd Management Area Plan.

26 113. To the extent Defendants have interpreted the BLM Handbook to conflict with

1 Defendants' mandatory duty to comply with 43 C.F.R. § 4710.4 to carry out management of wild  
2 horse herds at the minimum level necessary to attain the objectives identified in approved land use  
3 plans and herd management area plans, Defendants have acted arbitrarily and capriciously and  
4 contrary to the law and abused their discretion.

5 114. Defendants only have authority to immediately remove excess animals from the  
6 range when current information indicates that there is an overpopulation and action is necessary  
7 to remove excess animals. 16 U.S.C. § 1333(b)(2).

8 115. Defendants rely on a 2017 Gather Plan Final Environmental Assessment as  
9 justification for an August 2022 gather of wild horses and burros from the Blue Wing Complex in  
10 violation of 16 U.S.C. § 1333.

11 116. Defendants' decision to proceed with the gather and removal of 1,000 wild horses  
12 and burros from the Blue Wing Complex was arbitrary and capricious, an abuse of discretion, and  
13 contrary to the law.

14 117. Defendants' failure to adopt a Herd Management Area Plan and failure to complete  
15 a new or supplemental Environmental Assessment for the Blue Wing Complex has injured  
16 Plaintiffs in the manner described in this Complaint.

17 118. The Administrative Procedure Act gives this court authority to hold unlawful and  
18 set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not  
19 in accordance with law." 5 U.S.C. § 706(2)(A).

#### 20 **FOURTH CAUSE OF ACTION**

##### 21 **Administrative Procedure Act, 5 U.S.C. § 706(2)(C)**

22 119. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as  
23 though fully set forth herein.

24 120. Defendants exceeded their statutory jurisdiction and authority as well as their own  
25 regulatory limitations when they removed 1,000 wild horses and burros from the Blue Wing  
26 Complex without ensuring its management was at the minimum level necessary to attain the  
objectives identified in a herd management area plan. *See* 43 C.F.R. § 4710.4.

1           121. To the extent Defendants have interpreted the BLM Handbook to conflict with  
2 Defendants' mandatory duty to comply with 43 C.F.R. § 4710.4 to carry out management of wild  
3 horse herds at the minimum level necessary to attain the objectives identified in approved land use  
4 plans and herd management area plans, Defendants have acted in excess of statutory jurisdiction,  
5 authority, or limitations.

6           122. Defendants' failure to adopt a Herd Management Area Plan and failure to complete  
7 a new or supplemental Environmental Assessment for the Blue Wing Complex has injured  
8 Plaintiffs in the manner described in this Complaint.

9           123. The court may also set aside agency actions "in excess of statutory jurisdiction,  
10 authority, or limitations." 5 U.S.C. § 706(2)(C).

#### 11                                   **FIFTH CAUSE OF ACTION**

#### 12           **National Environmental Policy Act and Administrative Procedure Act, 5 U.S.C. § 706(2)**

13           124. Plaintiffs hereby incorporate all previous allegations contained in this Complaint as  
14 though fully set forth herein.

15           125. The BLM violated NEPA when it failed to analyze the significant environmental  
16 impacts of removing wild horses from the Blue Wing Complex as alleged herein, including by  
17 failing to analyze (1) alternative methods of habitat management, such as rewilding and retiring  
18 livestock grazing allotments and licenses; (2) population control, including managing to preserve  
19 rare genetic lines of wild horse breeds; and (3) significant environmental impacts of removing the  
20 vast majority of the wild horses and burros on the range.

21           126. In addition, the BLM violated NEPA by abusing its discretion to permit a 20-year  
22 Environmental Assessment for multiple gathers. *See Friends of Animals v. Culver*, No. 19-3506  
(D.D.C. Jun. 28, 2022) (holding "BLM's ten-year deadline [in a wild horse gather EA] exceeds its  
23 discretion, per statutory command").

24           127. Defendants' decision to proceed with the gather and removal of 1,000 wild horses  
25 and burros from the Blue Wing Complex without analyzing significant environmental impacts was  
26 arbitrary and capricious, an abuse of discretion, and contrary to the law.

1           128. Defendants' actions have injured plaintiffs in the manner described in this  
2 Complaint.

3           129. The BLM's decision to adopt the Blue Wing Gather Environmental Assessment  
4 was arbitrary and capricious, and not in accordance with law in violation of the APA, 5 U.S.C. §  
5 706(2).

6                                   **PRAYER FOR RELIEF**

7           WHEREFORE, Plaintiffs respectfully requests that this Court:

- 8                   A. Issue a writ of prohibition preventing Defendants from gathering wild horses until  
9                   Defendants have fully complied with the Wild Free-Roaming Horses and Burros  
10                  Act, National Environmental Policy Act, and Administrative Procedure Act;  
11                  B. Issue an order and injunction compelling Defendants to immediately stop  
12                  implementation of the Blue Wing Complex Environmental Assessment until  
13                  Defendants have fully complied with the Wild Free-Roaming Horses and Burros  
14                  Act, National Environmental Policy Act, and Administrative Procedure Act;  
15                  C. Vacate and set aside the Blue Wing Complex Gather Environmental Assessment;  
16                  D. Maintain jurisdiction over this action until Defendants are in compliance with the  
17                  Wild Free-Roaming Horses and Burros Act, the Administrative Procedure Act,  
18                  the National Environmental Policy Act, and every order of this Court;  
19                  E. Award Plaintiffs attorney fees and costs pursuant to and 28 U.S.C. § 2412; and  
20                  F. Grant such additional and further relief to which plaintiffs may be entitled.



1 DATED: July 26, 2022,

Respectfully Submitted,

2 /s/ Alexandra J. Monson

3 Jessica L. Blome

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4 Alexandra J. Monson

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